

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2016)	MD Docket No. 16-166
)	

COMMENTS OF ITTA

ITTA – The Voice of Mid-Size Communications Companies (“ITTA”) hereby submits these comments in response to the May 18, 2016 Notice of Proposed Rulemaking (“*NPRM*”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.¹ The *NPRM* seeks comment on the Commission’s proposed regulatory fees for fiscal year 2016, including ITTA’s proposals to combine wireless voice and wireline services into the Interstate Telecommunications Service Provider (“ITSP”) category or, alternatively, to re-assign certain Wireline Competition Bureau Full Time Equivalents (“FTEs”) to other fee categories for regulatory fee purposes.² The *NPRM* also seeks comment on whether to allocate some portion of the direct FTEs that devote time to universal service and/or numbering issues as additional indirect FTEs in lieu of adopting ITTA’s proposals.³

I. THE COMMISSION SHOULD ADOPT THE ITTA APPROACH TO ADDRESS THE DISPARITY IN REGULATORY FEES FOR ITSPs

The Commission tentatively concludes in the *NPRM* that combining wireline and wireless categories, reassigning Wireline Competition Bureau FTEs to the Wireless

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, MD Docket No. 16-166, Notice of Proposed Rulemaking, FCC 16-61 (Rel. May 19, 2016) (“*NPRM*”).

² *NPRM* at ¶ 18.

³ *Id.* at ¶ 19.

Telecommunications Bureau, and/or adopting a new subcategory for CMRS in the ITSP regulatory fee category (as proposed by ITTA) are not consistent with Commission orders implementing Section 9 of the Communications Act of 1934, as amended.⁴ The Commission seeks comment on a possible alternative means of addressing the disparity in regulatory fee treatment between wireline and wireless voice providers. Specifically, it invites input on whether it would be appropriate to allocate some portion of the Wireline Competition Bureau direct FTEs that devote time to universal service and/or numbering issues as additional indirect FTEs.⁵

ITTA maintains that the Commission should reject its tentative conclusions and instead adopt one of ITTA's proposed solutions. ITTA has repeatedly explained that providers and consumers of wireline voice service have borne a disproportionate regulatory fee burden relative to other industry sectors for more than a decade. ITTA has repeatedly called on the FCC to address this disparity and to better align ITSP regulatory fees with the actual work of the Commission.⁶ This disparity harms some of the consumers least able to afford additional fees by increasing the cost of their home phone service. Under the Commission's proposed FY2016 budget, the regulatory fees paid for by Wireline Competition Bureau regulates (i.e. ITSPs and

⁴ *NPRM* at ¶ 17.

⁵ *Id.* at ¶ 19.

⁶ *See, e.g.*, Comments of ITTA – The Voice of Mid-Size Communications Companies, MD Docket Nos. 14-92, 13-140, 12-201 (filed Nov. 26, 2014); Comments of ITTA – The Voice of Mid-Size Communications Companies, the Eastern Rural Telecom Association, and Windstream Corporation, MD Docket Nos. 14-92, 13-140, 12-201 (filed July 7, 2014); Comments of the Independent Telephone & Telecommunications Alliance, MD Docket Nos. 13-140, 12-201, 08-65 (filed June 19, 2013); Reply Comments of the Independent Telephone & Telecommunications Alliance, MD Docket No. 08-65 (filed June 6, 2008); Comments of the Independent Telephone & Telecommunications Alliance, MD Docket No. 08-65 (filed Sept. 25, 2008).

toll-free numbers) would account for nearly \$147 million of the FCC's approximately \$384 million total annual regulatory fee revenue requirement.⁷ That means ITSPs and toll-free numbers would be responsible for nearly 40% of the total FCC regulatory fee burden, which has been (and continues to be) more than any other industry sector regulated by the Commission. This disproportionate fee burden is particularly inequitable in light of the fact that the Commission's resources devoted to regulating wireline providers continues to diminish in relation to other industry sectors.

Notwithstanding the *NPRM*'s tentative conclusions, ITTA continues to believe there is clear precedent for the Commission to combine wireless providers into the ITSP regulatory fee category, similar to how the Commission combined interconnected VoIP and DBS providers into existing fee categories in recognition of the work performed by the relevant core bureaus overseeing such entities.

When the Commission determined to treat interconnected VoIP providers as ITSPs, it recognized "that the costs and benefits associated with [its] regulation of interconnected VoIP providers are not identical as those associated with regulating interstate telecommunications service."⁸ However, the Commission noted that "regulatory fee assessments are based on the burden imposed on the Commission, not benefits realized by regulatees."⁹ Given that interconnected VoIP providers create costs for the Commission by participating in rulemaking proceedings, waiver petitions, and other matters based on Commission rules requiring such

⁷ *NPRM* at ¶ 6. The fees for ITSPs would be approximately \$142 million and the fees for toll-free numbers would be approximately \$4.7 million. *NPRM* at Appendix A, page 18.

⁸ See *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-140, at ¶ 19 (rel. Aug. 6, 2007) ("*FY 2007 R&O*").

⁹ *Id.*

providers to contribute to the Universal Service Fund, provide 911 emergency access, and comply with CPNI and other requirements applicable to voice services, the Commission concluded that “this category of service providers should share in the costs of the Commission’s regulatory activities in the same manner as ITSPs.”¹⁰ Thus, interconnected VoIP providers were added to the ITSP regulatory fee category as a permitted amendment pursuant to Section 9 of the Communications Act.¹¹

The Commission relied on similar reasoning and authority when it determined to incorporate DBS providers into the regulatory fee category for cable and IPTV providers. As the Commission noted, DBS providers are subject to many of the same rules as cable and IPTV providers and are regulated by Media Bureau FTEs in much the same manner as other MVPDs.¹² For instance, DBS providers, as with other MVPDs, can avail themselves of the program access, program carriage, and retransmission consent rules.¹³ They also are required to comply with other Commission regulations the Media Bureau oversees, such as rules implemented pursuant to the Commercial Advertisement Loudness Mitigation Act, the Twenty-First Century Communications and Video Accessibility Act of 2010, and the Satellite Television Extension and Localism Reauthorization Act of 2014.¹⁴

¹⁰ *Id.*

¹¹ *See* 47 U.S.C. § 159(b)(3).

¹² *See In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2015; Amendment of Part 1 of the Commission’s Rules; Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, MD Docket Nos. 15-121, 14-92, Notice of Proposed Rulemaking, Report and Order, and Order, FCC 15-59, at ¶ 31 (rel. May 21, 2015) (“*FY 2015 NPRM*”).

¹³ *See id.*

¹⁴ *See id.*

Although DBS providers are not subject to all of the regulations and requirements imposed on the cable industry, there is significant overlap in the regulatory policies, programs, and obligations that apply to DBS providers and other MVPDs.¹⁵ Because DBS providers create costs for Media Bureau staff by routinely participating in rulemaking and other proceedings relating to such matters, the Commission adopted a permitted amendment to ensure that DBS providers share in the costs of the Media Bureau’s regulatory activities in the same manner as cable and IPTV providers.¹⁶

Thus, there is clear precedent and authority for the Commission to adopt ITTA’s proposal to treat wireless voice providers as ITSPs. As the Commission has acknowledged, wireline and wireless voice services are comparable in many ways and are subject to many of the same regulatory policies, programs, and obligations, such as universal service, intercarrier compensation, number portability, 911 emergency access, special access, rate integration, customer proprietary network information, pole attachments, and CALEA.¹⁷

ITTA’s proposal is consistent with the Commission’s orders implementing Section 9 of the Communications Act. Section 9 requires the Commission to update its schedule of

¹⁵ See *id.* at ¶ 33.

¹⁶ See *id.* at ¶ 34. Similarly, the Commission adopted a permitted amendment to include IPTV providers in the regulatory fee category for cable television operators because “assessing regulatory fees on cable television systems, but not on IPTV... may place cable providers at a competitive disadvantage.” *FY 2013 R&O* at ¶ 32. The Commission noted that there is a “relatively small difference from a regulatory perspective” between IPTV providers and cable operators, even though the regulatory obligations pertaining to cable and IPTV providers are not identical. *Id.* at n. 81.

¹⁷ See *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees*; MD Docket Nos. 14-92, 13-140, 12-201, Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, FCC 14-88, ¶ 36 (rel. June 13, 2014) (“*FY 2014 NPRM*”).

regulatory fees each fiscal year to ensure that the fees collected are “reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”¹⁸ Further, Section 9 directs the Commission to take into account “factors that the Commission determines are necessary in the public interest.”¹⁹ ITTA’s proposal recognizes that wireline and wireless voice services are subject to many of the same regulatory policies, programs and obligations. Combining wireless voice and wireline services into the ITSP category is an appropriate step for the Commission to take to comply with its Section 9 mandate.

In the event that the Commission decides not to combine wireless voice and wireline voice into the ITSP regulatory fee category, however, the Commission should adopt ITTA’s alternative proposal to reassign Wireline Competition Bureau FTEs to the Wireless Telecommunications Bureau, and/or adopt a new subcategory for wireless providers in the ITSP regulatory fee category.

It is indisputable that a fundamental problem with the existing regulatory fee structure is that as a result of changes in the communications industry and the convergence of technologies the work of Wireline Competition Bureau FTEs is no longer focused exclusively on ITSPs. Resources expended by Wireline Competition Bureau FTEs increasingly benefit other industry sectors, such that ITSPs should no longer bear the entire burden of regulatory fees attributed to the Wireline Competition Bureau. Given the Commission’s statutory mandate to update its schedule of regulatory fees to “reflect . . . changes in the nature of its services”²⁰ so that

¹⁸ 47 U.S.C. §159(b)(1)(A).

¹⁹ *Id.*

²⁰ *See* Communications Act § 9(b)(3). (“[T]he Commission shall, by regulation, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A). In making such amendments, the Commission shall add, delete, or reclassify services in the Schedule to reflect additions,

regulatory fees reflect the Commission's current activities and the benefits regulated entities receive from those activities,²¹ the Commission must make adjustments to ensure that its regulatory fees reflect its actual costs by industry sector as the marketplace evolves.

There are 165 FTEs in the Wireline Competition Bureau,²² and an evaluation of the activities of those employees raises legitimate questions as to whether the work performed by certain staff is properly allocated under the current fee structure. For instance, the Bureau continues to expend substantial resources in an effort to modernize the Lifeline program. The Bureau has and continues to devote an enormous amount of effort to reforming the Commission's high-cost mechanisms. The Bureau also works on issues relating to its E-rate and rural healthcare programs on a consistent basis. These and other issues overseen by the Wireline Competition Bureau impact various types of communications providers, not just ITSPs.

Indeed, although universal service is a significant focus of the Wireline Competition Bureau, it not the only area of Bureau oversight that affects multiple types of communications providers. There are numerous regulatory policies, programs, and obligations that affect non-ITSPs, particularly wireless carriers, including number portability, 911 emergency access, special access, rate integration, customer proprietary network information, pole attachments, and CALEA. Given that these and other programs and proceedings within the purview of the Wireline Competition Bureau generate significant benefits and obligations for entities that do not

deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.”).

²¹ See Communications Act § 9(b)(1)(A) (“The fees assessed... shall... be derived by determining the full-time equivalent number of employees... within the... offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities...”).

²² *NPRM* at n. 9.

pay regulatory fees as ITSPs, the Commission should adjust its fee structure to properly account for this industry crossover.²³

The inequitable disparity in regulatory fees paid by providers and consumers of wireline voice service could be addressed by reassigning or adopting a new category within the ITSP regulatory fee category for Wireline Competition Bureau FTEs to properly account for the numerous regulatory activities of the Bureau that impact other industry sectors. Section 9 of the Communications Act requires that fees levied on regulated entities be derived based on the number of FTEs engaged in regulatory activities within the named bureaus “and other offices of the Commission” adjusted to account for “factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”²⁴ “[T]he plain wording of the statute requires the Commission to calculate fees based on what FTEs are doing, not on where they are located.”²⁵ Accordingly, the Commission should reassign Wireline Competition Bureau FTEs that benefit wireless providers to the Wireless Telecommunications Bureau or at a minimum put them into a new category within the ITSP regulatory fee category so that the industry sectors that benefit from these FTEs will bear their fair share of the associated regulatory fees.

II. AT A MINIMUM, THE COMMISSION SHOULD ALLOCATE WIRELINE COMPETITION BUREAU DIRECT FTES AS ADDITIONAL INDIRECT FTES

²³ These other programs and proceedings include E-rate, rural healthcare, and Open Internet, to name a few.

²⁴ 47 U.S.C. §159(b)(1)(A).

²⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket Nos. 13-140, 12-201 and 08-65, 28 FCC Rcd 12351 ¶ 18 (2013).

The NPRM seeks comment on whether it would be appropriate to allocate some portion of the direct FTEs that devote time to universal service and/or numbering issues as additional indirect FTEs.²⁶ In the event the Commission fails to adopt one of the ITTA proposals, it should at a minimum allocate direct FTEs devoted to universal service and numbering issues as additional indirect FTEs. In addition, the Commission should allocate direct FTEs devoted to 911 support as indirect FTEs. It is the Commission's historical practice to allocate FTEs as indirect "where the FTEs work on a variety of issues that cannot be attributed to one particular type of industry or regulatee . . ."²⁷

As the Commission notes, based on the most recent 6 to 12 month period, approximately 52 FTEs in the Wireline Competition Bureau work on universal service issues.²⁸ A substantial portion of these FTEs should be allocated as indirect FTEs. At a minimum, the FTEs that work on the high cost program and the Lifeline program should be allocated as indirect FTEs. The FTEs that work on the high cost program should be allocated as indirect FTEs because a substantial portion of this work relates to the Connect America Fund and involves the participation of both wireline and wireless regulatees. The FTEs that work on the Lifeline program should be allocated as indirect FTEs because wireless providers are the primary beneficiaries of the Lifeline program.

²⁶ *NPRM* at ¶ 19. Approximately 16 of the Wireline Competition Bureau FTEs that works on universal service issues work on the high-cost program, 13 work on the schools and libraries program, nine work on the Lifeline program, seven work on the rural healthcare program, and seven work on universal service contributions. *Id.*

²⁷ *2015 R&O* ¶ 16.

²⁸ *NPRM* ¶ 19.

The Commission also notes that seven FTEs in the Wireline Competition Bureau work on numbering issues²⁹ and these FTEs should also be allocated as indirect FTEs. A significant number of entities benefiting from the Commission's work on numbering issues are not wireline providers. If numbering FTEs are not to be allocated directly to the Wireless Telecommunications Bureau, these FTEs should at least be allocated as indirect FTEs given the significant benefit that wireless providers receive.

Finally, ITTA concurs with CenturyLink's proposal to allocate an additional category of FTEs as indirect FTEs.³⁰ The Wireline Competition Bureau includes a number of FTEs that work on 911 issues. The 911 FTEs benefit both wireline providers and wireless providers and thus should be allocated as indirect FTEs.

III. CONCLUSION

For the above reasons, the Commission should either adopt one of the ITTA proposals or alternatively allocate the direct FTEs that devote time to universal service, numbering and 911 issues as additional indirect FTEs.

Respectfully submitted,

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November 20, 2016

²⁹ *Id.*

³⁰ Comments of CenturyLink, MD Docket No. 16-166 (filed June 20, 2016).